



## RONALD (RON) J. NESSIM

### PRINCIPAL

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### EDUCATION

University of Michigan Law School, J.D., *cum laude*, 1980

Stanford University, Stanford, A.B., with distinction, Phi Beta Kappa, 1977

## OVERVIEW

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Ron Nessim has been on the winning side of more than 40 criminal and civil trials and arbitrations. He has argued numerous appeals in both federal and state courts, including in the United States Supreme Court, and has been at the center of numerous precedent-setting, high-profile entertainment, commercial and white-collar criminal law cases. His clients value his attention to detail, ability to think strategically, tenacity and his trial skills. Prior to joining Bird Marella, he served as a federal prosecutor.

Mr. Nessim was selected by his peers as the 2015 Criminal Defense: White Collar “Lawyer of the Year,” for the Los Angeles area by *The Best Lawyers in America*. He has also been recognized by *Chambers & Partners*, *Variety* and *Southern California Super Lawyers* for his entertainment litigation, white collar, and commercial litigation expertise.

In the entertainment arena, Mr. Nessim largely represents talent in disputes with the major television studios. Mr. Nessim currently represents five profit participants in *The Walking Dead* and Eric Kripke, the creator of *Supernatural*. His past representations include Carsey-Werner, (Roseanne series in connection with Roseanne’s tweets and ABC’s cancellation of the series), Don Bellisario (first opportunity rights in *NCIS:LA*), Dick Wolf (*Law & Order* franchise), Shonda Rhimes (*Grey’s Anatomy*), J.J. Abrams (*Lost*), David Kohan and Max Mutchnick (*Will & Grace*), Barry Levinson and Tom Fontana (*Homicide: Life on the Streets*) and Danielle Steel (*Danielle Steel Movies of the Week*).

In the criminal and health care fraud arena, Mr. Nessim represents individuals and entities in pre-indictment and post-indictment criminal proceedings. Mr. Nessim has successfully tried numerous criminal and health care fraud cases and has often successfully persuaded prosecutors not to charge clients they had originally characterized as “targets” of their investigation.

In Mr. Nessim’s general commercial litigation practice, he represents plaintiffs and defendants in various business disputes and cases.

Mr. Nessim often represents clients who are facing parallel criminal and civil proceedings related to the same events. Given that he is experienced in both criminal and civil litigation, he can personally handle both the civil and criminal proceedings in a coordinated and cost-effective manner.

Mr. Nessim is active in the community and has served, and continues to serve, on the board of several non-profits.

## EXPERIENCE

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### Representative Cases:

(Client names only listed where representation is not confidential)

Currently representing a former head of real estate of a large multi-family firm in a JAMS arbitration against the firm due to its wrongful termination of our client in violation of public policy.

Served as litigation counsel to Carsey-Werner, the production company for the Roseanne series in connection with Roseanne's tweets and ABC's cancellation of the series.

Represented a department chair at UCLA in a wide ranging internal investigation involving allegations of violations of the Political Reform Act. The matter involved first impression issues involving the commercialization of academic inventions and whether University resources could be used for tasks that were both academic and commercial in nature. The investigation terminated in a favorable confidential settlement.

Represented Don Bellisario, the creator of the JAG and NCIS television series, in a state court lawsuit against CBS alleging that CBS violated his first opportunity rights to write and executive produce NCIS-LA. The parties agreed to a confidential settlement one week before the start of the scheduled jury trial.

Represented Ross Klein, former head of the luxury hotel division of Starwood Hotels and then Hilton Hotels, in a federal pre-indictment criminal investigation in the Southern District of New York involving the alleged theft of trade secrets and computer fraud where the United States Attorney's Office in the Southern District of New York ultimately declined to bring charges. Also represented Klein in a parallel federal civil case in the Southern District of New York that ended with a confidential settlement.

Represented Tom Mackey, former COO of Tenet Health Care, in parallel criminal SEC, civil False Claims Act, class action and derivative proceedings involving Tenet's gross pricing practices and receipt of outlier payments all of which successfully resolved for Mackey.

Represented David Kohan and Max Mutchnick, the creators of the "Will & Grace," television series, and their agent in a three-month state court jury trial of their profit participation claims. After the jury agreed on \$49.5 million in compensatory damages and made punitive damages findings against defendant NBC Studios, the parties agreed to a confidential settlement of the case.

Represented defendant Chake Kojayan in a watershed prosecutorial misconduct case. Finding that the prosecutor lied to the jury and misled both the trial and appellate courts, the Ninth Circuit reversed Kojayan's conviction. The Ninth Circuit specifically praised Mr. Nessim's conduct and criticized the United States Attorney's Office for its conduct. *United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993). On remand, the district court dismissed the indictment with prejudice as a sanction for the government's misconduct.

Represented Lee Robbins, a state prisoner, in connection with his federal habeas corpus petition before the United States Supreme Court. The district court granted the petition and the Ninth Circuit affirmed. The U.S. Supreme Court granted certiorari and over vigorous dissents (Justices Stevens, Souter, Ginsburg and Breyer), the Court reversed on a 5-4 vote. *Smith v. Robbins*, 528 U.S. 259 (2000).

Represented Hector Contreras and HLC Electronics, his wholly owned corporation, in parallel federal civil and criminal litigation in a case involving alleged trademark infringement and various frauds involving reconditioned circuit breakers

that were found in a number of sensitive U.S. military and nuclear facilities. Both Contreras and his corporation were acquitted of all 56 counts charged in the indictment after a six-week federal court jury trial. Also successfully settled the parallel civil case brought by large circuit breaker manufacturers in a manner that funded the criminal case.

Represented Benjamin Johnson, an internationally known art dealer, through a federal pre-criminal investigation where, after lengthy proceedings, the Court ordered the U.S. government to return the pre-Colombian art it had seized from Johnson and declined to bring criminal charges against Johnson. The Government of Peru then brought a parallel civil suit against Johnson in federal court claiming that his pre-Colombian art collection was the property of Peru under its patrimony laws. After a court trial, the court returned a verdict in Johnson's favor. *Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989).

Represented Precision Dynamics Corporation and several of its officers and directors in a state court trial involving a shareholder's challenge of the election of the corporation's directors and various alleged breaches of fiduciary duty. Following the end of the Plaintiffs' case in chief, judgment was entered for all of our defendant clients.

Represented Henry Mayo Memorial Hospital in an arbitration against a radiology group revolving around the hospital's termination of its contracts with the radiology group on fraud and abuse grounds. The arbitrator ruled in favor of the hospital on all claims.

Represented Stone Boardwear, Inc., aka Volcom, Inc., a defendant in a state civil antitrust case. After developing facts of a large tax fraud committed by the plaintiff company, successfully referred the matter to the United States Attorney's Office where the principal of the plaintiff company was criminally prosecuted. The civil case ended with a confidential settlement.

Represented Milberg LLP in a sanctions hearing in federal court in San Diego where the defendant corporation alleged that Milberg knowingly received and used stolen documents in the underlying federal securities class action. The court found that no misconduct had occurred.

Represented Thrifty Oil in a putative class action which went before the state appellate court twice, *Linder v. Thrifty Oil*, 58 Cal. App. 4th 664 (1997) and 91 Cal. App. 4th 1070 (2001) and the California Supreme Court once (23 Cal. 4th 429 (2000)). The case ultimately resolved in a favorable settlement.

Represented Gregory Jenkins where following his acquittal of six of eight felony counts in a federal criminal court trial, the granting of a new trial motion as to the remaining two counts and, the filing of a prosecutorial misconduct motion, the government dismissed the remaining two counts.

## Published Cases

*Linder v. Thrifty Oil Co.*, 91 Cal. App. 4th 1070 (2001). Represented Thrifty Oil in this putative class action which went before the state appellate court twice (above and 58 Cal. App. 4th 664 (1997)) and the California Supreme Court once (23 Cal. 4th 429 (2000)).

*Smith v. Robbins*, 528 U.S. 259 (2000). Represented Robbins, a state prisoner, in connection with his federal habeas corpus petition, which raised several issues of federal constitutional law. The district court granted the petition and the Ninth Circuit affirmed. 152 F.3d 1062 (9th Cir. 1998). The U.S. Supreme Court granted certiorari and Mr. Nessim argued the case in October 1999. Over vigorous dissents (Justices Stevens, Souter, Ginsburg and Breyer), the Court reversed on a 5-4 vote.

*United States v. Kojayan*, 8 F.3d 1315 (9th Cir. 1993). Represented Kojayan in this watershed prosecutorial misconduct case. Finding that the prosecutor lied to the jury and misled both the trial and appellate courts, the Ninth Circuit reversed Kojayan's conviction. The Ninth Circuit specifically praised Mr. Nessim's conduct and criticized the United States Attorney's Office for its conduct. On remand, the district court dismissed the indictment with prejudice as a sanction for the government's misconduct.

*Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989). Represented Johnson, an internationally known art dealer, through a federal pre-indictment criminal investigation involving pre-Colombian art where, after lengthy proceedings, the Court ordered the U.S. government to return the pre-Colombian art it had seized from Johnson and, based on our presentations, the government declined to bring criminal charges against Johnson. The Government of Peru then brought a parallel civil suit against Johnson claiming that his pre-Colombian art collection was its own under its patrimony laws. After a trial, the court returned a verdict in Johnson's favor on all counts. The Ninth Circuit affirmed in an unpublished opinion.

## HONORS & AWARDS

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Named among the "Elite Boutique Trailblazers" by the National Law Journal, 2018

Listed, Best Lawyers In America, 2006 – present in white collar criminal defense and commercial litigation; named 2015 Los Angeles Criminal Defense White Collar Lawyer of the Year

Listed, Chambers and Partners, Media & Entertainment Litigation, 2016 – present

Named a "Southern California Super Lawyer" by Los Angeles Magazine, 2004 – present

Named to Variety Magazine's Legal Impact Report, 2014

## AFFILIATIONS

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Member, Standing Committee on Discipline, United States District Court, Central District of California, 2012-2016

Board of Directors, Public Counsel, 2002-2010

Co-Chair, National ABA White Collar Crime Committee, 2004-2007

Chair, West Coast Regional Subcommittee, ABA White Collar Crime Committee, 2002-2004

Co-Chair, Health Care & Abuse Subcommittee, ABA White Collar Crime Committee, 1998-2004

## PUBLICATIONS

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Author: "Profit Participation Claims," Chapter 7 in Entertainment Litigation, Lexis Nexis, 2017-2018

Co-author: "Mandatory Arbitration Provisions in Talent-Studio Contracts and Proposed Areas for Improvement," published in 22 UCLA Ent. L. Rev. 233, 2015

Author: "Taking the Fifth," California Lawyer, November, 2013.

Co-author: "Medicare Cost Certification: The Government Asks Too Much" ABA National Institute on The False Claims Act and Qui Tam Enforcement, November, 2001.

Co-author: "Open Questions Under the Anti-Kickback Statute," ABA National Institute on White Collar Crime, March 2000.

Co-author: "Litigation Issues in Fraud and Abuse," 19 Whittier Law Review 51, 1997.

Author: "Criminal (and Civil) Trademark Infringement; What Statute of Limitations Applies?" Journal of the Patent and Trademark Society, December, 1994.

Author: "The Glass Slipper," The Los Angeles Lawyer, November, 1994.

Author: "Internal Investigations," ABA National Institute on Health Care Fraud, February, 1994.

Author: "Joint Defense Privilege and Conflicts of Interest," The Los Angeles Lawyer, May 1992.

Author: "Conflicts and Confidences, The Defense Viewpoint," ABA Criminal Justice, Spring, 1992.

Author: "Parallel Civil and Criminal Litigation," The Los Angeles Lawyer, December 1990.

## EVENTS

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Faculty, ABA National Institute on White Collar Crime, 1999-2001, 2003, 2005-2015 programs.

Multiple MCLE presentations on Mandatory Arbitration Provisions involving talent and studios and proposed areas for improvement, 2015-2016.

Multiple MCLE presentations on "Lessons Learned in *Bellisario v. CBS*" to transactional entertainment firms and others, 2013-2014.

Faculty, ABA National Institute on Health Care Fraud, 1993-2003, 2005, 2007 programs.

## FORMER POSITIONS

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Assistant United States Attorney, Central District of California, Criminal Division, Major Frauds Unit, Founding Chair – Bankruptcy Fraud Task Force, Commendations from FBI Director William Webster and other federal agencies (2/84 – 12/87)

Associate, Gibson, Dunn & Crutcher (10/80 – 2/84)

## **ADMISSIONS**

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California Bar (1980)

U.S. District Courts of California: Central, Northern, Southern, and Eastern Districts of California

Ninth Circuit Court of Appeals

United States Supreme Court